

In the High Court of Uttarakhand, Nainital.

W.P. (S/B) No. 76/2003

Sohan Singh Rawat,
S/o Late Udai Singh Rawat,
R/o 30-D, Kalidas Road,
District Dehradun ... Petitioner.

Versus

1- State of U.P. through Secretary,
Nagar Vikas, Government of
U.P., Secretariat, Lucknow.

2- Joint Secretary, Govt. of U.P.
Nagar Vikas Anubhag-1, Bapu Bhawan,
Lucknow.

3- Director,
Local Bodies, Uttar Pradesh
Indira Bhawan, Lucknow Respondents.

Sri Rajendra Dobhal, Advocate for the petitioner.
Sri K.P. Upadhyaya, learned S.C. for State of Uttarakhand.
Smt. Beena Pandey, learned S.C. for State of U.P.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.**

Dated: 3rd May, 2006

By way of this writ petition the relief has been sought for issuing of a writ in the nature of certiorari quashing the charge sheet dated 9-7-1998 contained in Annexure Nos. 5 and 10 to the writ petition. The petitioner also sought the relief in the nature of mandamus commanding the respondents to pay the full and final pension to the petitioner with effect from 1.10.1999.

2. Brief facts, as per the petition, are that the petitioner was appointed as Sanitary and Food Inspector in the year 1962. thereafter the petitioner was selected for the post of Executive Officer Class II and on 1.3.1977 he was promoted to the post of Executive Officer Class-I and was posted at Nagar Palika, Kashipur, District Nainital. On 6.7.1987 the petitioner was promoted to the post of Senior Class-I Up Nagar Adhikari and was posted at Municipal Board, Rishikesh. The petitioner retired on 30-9-1999 from the post of Up Nagar Adhikari, Dehradun after

attaining the age of superannuation. The petitioner has averred that after his retirement he was issued no-dues certificated from the Nagar Nigam.

3- The petitioner further reveals that on 7-7-1998, i.e. just before the retirement of the petitioner, the respondent No. 1 passed an order initiating a departmental disciplinary proceeding against the petitioner on the ground that during his tenure while he was posted as Executive Officer Class-I in Nagar Palika, Saharanpur in the year 1980, he had recommended the regularization of five Beldars in Nagar Palika, Saharanpur. The petitioner was given a charge sheet by the Enquiry Officer on 9-7-1998. The petitioner replied to the charge sheet and thereafter the Enquiry Officer submitted his enquiry report on 21.6.2000. The petitioner was exonerated of one of the charges and was further directed to submit his reply to the State Government explaining as to why he should not be punished. The petitioner filed his reply. The respondents after the reply was submitted did not take any decision regarding the payment of post retirement dues.

4- The petitioner was further served with a notice dated 19-4-2001 along with another charge sheet dated 27.3.2001 levelling the similar charges against him that while he was posted at Haldwani, District Nainital, as Executive Officer, he had appointed 15 persons on class- IV post in Nagar Palika, Haldwani. The petitioner replied to the charge sheet submitted against him. Even after submission of the reply by the petitioner the respondents have not taken any decision in the matter and due to inaction on the part of respondents the petitioner has not paid the full and final pension, amount of gratuity etc as yet.

5- During the pendency of the writ petition the respondent passed an order on 30-6-2003 contained in Annexure 13 to the writ petition, by which a punishment of the deduction of 5% from the pension and gratuity was imposed. The respondent has also passed another order on 30-6-2003, contained in Annexure-14 to the writ petition, by which a punishment of deduction of 10% from the pension and gratuity was imposed. The respondent also passed an order on 3.7.2003, contained in Annexure-16 to the

writ petition deducting a total amount of Rs. 1,18,396-00 from gratuity of petitioner. The respondent further on 3.7.2003 passed an order contained in annexure No. 17 to the writ petition, deducting 15% from the pension of the petitioner, i.e. Rs. 918/-. The petitioner has, therefore, sought amendment in the writ petition as well as in the relief which was allowed by an order of this Court and the petitioner accordingly incorporated the amendment in relief claimed, and sought the relief for issuing a writ in the nature of certiorari quashing the orders dated 30-6-2003 (Annexure -13 and 14 to the writ petition) as well as the orders dated 3.7.2003 (Annexure-16 and 17 to the writ petition).

6- The counter affidavit has been filed by the respondents stating therein that the petitioner while posted at Nagar Palika, Saharanpur in the year 1980 recommended regularization of five Beldars while there was no post of Beldar available in Nagar Palika, Saharanpur. It has also been pleaded that while the petitioner was posted at Nagar Palika, Haldwani, he appointed 15 persons on class-IV post in the year 1990 in violation of the Government Orders. Therefore, the deduction in the pension and gratuity from the petitioner has rightly been made.

7- Heard the learned counsel for the parties and perused the record.

8- It appears from record that the matter of regularization of Beldar in Nagar Palika, Saharanpur pertains to the year 1980. The record shows that no disciplinary proceeding was initiated in this regard by the department for a long time and the department has also not averred any satisfactory explanation for the inordinate delay in initiating the disciplinary proceeding.

9- Likewise the record reveals that the another charge was leveled against the petitioner for giving appointment to 15 persons on class –IV posts in the year 1990 while he was posted at Nagar Palika, Haldwani. No disciplinary enquiry has also been initiated in this regard for a long time and the explanation for this inordinate delay has also not been put forward by the respondent, therefore, we hold that it would be unfair on the part of the

department to hold the enquiry after the inordinate delay and to proceed further at the late stage.

10- The Hon'ble Supreme Court in the case **State of Madhya Pradesh Vs. Bani Singh and another** reported in **1990 (Supp) Supreme Court Cases 738** has held that "if the department has taken long time in initiating disciplinary proceeding and there is no satisfactory explanation for this inordinate delay, then it will be unfair to permit the departmental enquiry to proceed."

11- The department has not come with a case that they were not aware of the irregularities, if any, and came to know only in the year 1998 and 2001. It does not appear from the record that the matter with regard to the regularization of the Beldars came in the knowledge of the department in the year 1998 for the first time. Similarly the matter with regard to the appointment of 15 class IV employees in the Nagar Palika Haldwani in the year 1990 did not come in the Knowledge of the department upto 2001, i.e. after about 11 years. Therefore we do not find anything on the record that the department has put any satisfactory explanation for the inordinate delay in initiating the disciplinary proceeding against the petitioner.

12- It also reveals from the record that the petitioner was to retire on 30-9-1999 and just before his retirement the initiation of the departmental proceeding in stale issued of more than 20 years old appears to be quite illegal and arbitrary. The Hon'ble Supreme Court in the case of **Bhagirathi Vs. Board of Director and others**, reported in **A.I.R. 1999 (3) Page- 1841 (Supreme Court)** has held that after the retirement the continuation or initiation of disciplinary proceeding against the petitioner, is illegal and arbitrary.

13- In the instant case the charges leveled against the petitioner appear to be quite stale, hence it would be absolutely unfair on the part of the department in passing the orders contained in Annexure- 13, 14, 16 and 17 to the writ petition.

14- In view of above, the writ petition is liable to be allowed and the impugned orders dated 30-6-2003, contained in

Annexure 13 and 14 as well as orders dated 3.7.2003, contained in Annexures- 16 and 17 are liable to be quashed.

15- Accordingly the writ petition is allowed and the impugned orders dated 30-6-2003, contained in Annexures 13 and 14 as well as the impugned orders dated 3.7.2003, contained in Annexures- 16 and 17 are hereby quashed.

(B.C. Kandpal, J.)

(P.C. Verma, J.)

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